

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE**

**SMITH & WESSON BRANDS, INC., SMITH &
WESSON SALES COMPANY, and SMITH &
WESSON INC.,**

Plaintiffs,

v.

**GURBIR S. GREWAL, *in his official capacity as
Attorney General of the State of New Jersey* and
NEW JERSEY DIVISION OF CONSUMER
AFFAIRS,**

Defendants.

CIVIL ACTION

CASE NO. 2:20-CV-19047 (EP) (ESK)

**JOINT STIPULATION TO MODIFY THE RECORD PURSUANT TO
FEDERAL RULE OF APPELLATE PROCEDURE 10(e)(2)(A)**

The parties in the above-captioned action, upon determining that good cause exists for the foregoing, hereby stipulate to modify the appellate record in this action to include the attached Opinion that the New Jersey Appellate Division issued on January 26, 2023—after this Court issued its December 27, 2022 Memorandum Opinion and Order dismissing this case with prejudice—as well as the Docket Sheet and Merits Briefing from the proceedings in the New Jersey Appellate Division. In support of this stipulation, the parties aver as follows:

1. The parties have been engaged in parallel proceedings in this Court and in the New Jersey state courts relating to the enforceability and legality of a subpoena that the New Jersey Division of Consumer Affairs served on Plaintiffs pursuant to the New Jersey Consumer Fraud Act in October 2020. (Dkt. 66-1 at 4-8.)

2. In response to the subpoena, Plaintiffs filed this action in this Court on December 15, 2020. (Dkt. 1.) On February 12, 2021, the Defendants filed an action to enforce the subpoena in the New Jersey Superior Court.

3. On June 30, 2021, the New Jersey Superior Court issued an opinion and order enforcing the subpoena. On July 19, 2021, Plaintiffs appealed that Order to the New Jersey Appellate Division.

4. In the fall of 2021, the parties filed merits briefs in that proceeding, attached to this stipulation. *See* **Exhibit A** (defendant-appellant's opening brief, filed on September 20, 2021); **Exhibit B** (State respondents' brief, filed on November 5, 2021); **Exhibit C** (defendant-appellant's reply brief, filed on November 22, 2021); **Exhibit D** (Appellate Division docket sheet).

5. On May 27, 2022, Defendants moved to stay or dismiss this action. (Dkt. 66.)

6. On December 27, 2022, this Court granted the motion and issued an order dismissing this action with prejudice. (Dkt. 78, 79.) The Court ruled that Plaintiffs' claims in this action were barred by res judicata in light of the New Jersey Superior Court's June 30, 2021 opinion and order.

7. On January 25, 2023, Plaintiffs appealed this Court's December 27 order (Dkt. 80.)

8. On January 26, 2023, the New Jersey Appellate Division issued an Opinion affirming the New Jersey Superior Court's June 30, 2021 order enforcing the subpoena. The New Jersey Appellate Division's Opinion is attached to this stipulation as **Exhibit E**.

9. Because the New Jersey Appellate Division issued its Opinion after this Court dismissed this action with prejudice, neither that Opinion nor the merits briefing submitted to the Appellate Division has been filed on ECF and therefore currently is not part of the appellate record in this case. *See* Fed. R. App. P. 10(a).

10. This case is now on appeal to the U.S. Court of Appeals for the Third Circuit.

11. The parties agree that the New Jersey Appellate Division's Opinion and the underlying merits briefing is relevant to the federal proceeding and thus should be included in the record for appeal.

12. Federal Rule of Appellate Procedure 10(e)(2)(A) permits parties to correct, supplement, or modify the appellate record based on a stipulation of the parties.

13. Accordingly, the parties hereby stipulate that the New Jersey Appellate Division's Opinion (attached to this Stipulation as **Exhibit E**), along with the associated merits briefs (**Exhibits A through C**) and the Appellate Division docket sheet (**Exhibit D**), should be included as part of the supplemental record that is certified and forwarded to the Third Circuit in connection with the pending appeal.

DATED: April ___, 2023

Evelyn Padin, United States District Judge

SO STIPULATED.

April 6, 2023

Respectfully submitted,

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